

REMARKS

In the Final Office Action mailed September 20, 2007, and Advisory Action dated December 28, 2007, claims 1-38, 59-62 and 81-93 were pending and stood rejected. In this amendment, claims 1, 11-13, 20, 21, 23, 28, 32-34, 36, 59-61, 81, 87, 89, 92 and 93 are amended, and claims 2-3, 5-10, 83-86 and 88 are cancelled in addition to previously cancelled claims 39-58 and 63-80. Further consideration of the present application including claims 1, 4, 11-38, 59-62, 81-82, 87 and 89-93 is respectfully requested.

Claims 5-11, 20-27 and 83-88 were initially indicated as being rejected under 35 U.S.C. §112, second paragraph. See e.g., Final Office Action, page 2. However, the Final Office Action then goes on to indicate that the previous rejection under 35 U.S.C. §112, second paragraph has been withdrawn. See e.g., Final Office Action, page 7, lines 4-6. Applicants are currently responding under the presumption that these rejections have been withdrawn. Clarification with regard to the status of the rejections under 35 U.S.C. §112, second paragraph is respectfully requested.

Claims 1-14, 18, 20-22, 81-88, 92 and 93 stand rejected under 35 USC §102(e) as being anticipated by U.S. Patent App. Pub. No. 2003/0105462 to Haider. Claim 1 is amended to recite, among other features, "said intermediate portion including a first member along one side of said visualization opening and a second member along the opposite side of said visualization opening, said first and second members each including a concavely curved outer side surface defining an outer most one of opposite sides of said plate and a concavely curved inner side surface opposite said respective outer side surface, said inner side surfaces defining respective ones of opposite sides of said visualization opening that extend along said longitudinal axis, wherein said first and second members each include a maximum width transversely to said longitudinal axis from said inner side surface to said outer side surface thereof that is uniform along a length of said visualization opening, said visualization opening including a minimum width transversely to said longitudinal axis between said opposite sides thereof, said minimum width of said visualization opening being greater than said maximum widths of said first and second members combined." Support for the amendment may be found, for example, in Figure 3 and paragraphs [0057] and [0058] of the publication of the

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present application. Claim 11 has been amended to depend from claim 1 in view of the cancellation of claim 5, and claims 12-13 have been amended to maintain consistency with claim 1. Claims 92-93 have been amended to depend from claim 20.

Haider fails to disclose or suggest at least these features in claim 1. For example, the members along the central element in Haider do not include a uniform width along the central element. Rather, the members have a variable width due the different curvatures of the inner and outer sides of the walls along the central element. Furthermore, there is no disclosure or teaching that the minimum width of the central element is greater than the combined maximum widths of the members along the central element. Therefore, withdrawal of this basis of the rejection of claim 1 is respectfully requested along with claims 4, 11-14, 18 and 92-93 depending from claim 1.

Amended claim 20 recites, among other features, "wherein said intermediate portion includes a first member along one side of said visualization opening and a second member along the opposite side of said visualization opening, said first and second members each including an outer side surface defining an outer most side of said plate and an inner side surface opposite said outer side surface, said inner side surfaces defining respective opposite sides of said visualization opening that extend along said longitudinal axis, wherein said first and second members each include a maximum width transversely to said longitudinal axis between said inner side and said outer side surface thereof, said visualization opening including a minimum width transversely to said longitudinal axis between said opposite sides thereof, said minimum width of said visualization opening being greater than said maximum widths of said first and second members combined." Support for the amendment may be found, for example, in Figure 3 and paragraphs [0057] and [0058] of the publication of the present application. Claims 21 and 23 have been amended to maintain consistency with claim 20. Claims 92 and 93 have been amended to depend directly or indirectly from claim 20.

Haider fails to disclose or suggest at least these features in claim 20. For example, there is no disclosure or teaching that the minimum width of the central element is greater than the combined maximum width of the members that extend along the central element. Therefore, withdrawal of this basis of the rejection of claim 20 is respectfully requested along with claims 21-22 and 92-93 depending from claim 20.

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Amended claim 81 recites, among other features, "wherein said intermediate portion includes a first member along one side of said visualization opening and a second member along an opposite side of said visualization opening, said first and second members each include a concavely curved outer surface extending along opposite outer edges of said plate between said first and second connection portions, said first and second members further including a convexly curved inner surface opposite said outer surface thereof, said inner surfaces extending along and defining respective sides of said visualization opening, wherein said inner and outer surfaces of said first member and said inner and outer surfaces of said second member each define a width along said longitudinal axis that is uniform along a length of said visualization opening." Support for the amendment may be found, for example, in Figure 3 and paragraphs [0057] and [0058] of the publication of the present application. Claim 87 has been amended to depend from claim 81 in view of the cancellation of claim 86 and to maintain consistency with amended claim 81.

Haider fails to disclose or suggest at least these features in claim 81. For example, the members along the central element in Haider do not include a uniform width along the central element. Rather, the members have a variable width due the different curvatures of the inner and outer sides of the walls along the central element. It also does not disclose or teach that the minimum width of the central element is greater than the combined maximum widths of the members along the central element and therefore does not teach claim 87. Withdrawal of this basis of the rejection of claim 81 is respectfully requested along with claims 82 and 87 depending therefrom.

Claims 36-38 stand rejected under 35 USC §102(b) as anticipated by U.S. Patent No. 5,423,826 to Coates et al. Amended claim 36 recites, among other features, a plate in combination with a holding instrument where the holding instrument includes "an actuating system including a movable linkage member and a stationary member, wherein said linkage member moves relative to said second member upon actuation of said actuating system; a holding system operably coupled to said actuating system, said holding system including first and second holding members coupled to respective ones of said linkage and said stationary member, wherein said first member is movable along said longitudinal axis with said actuating system between a release position and a clamping position with said second member to selectively engage and release said plate therebetween along

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said longitudinal axis thereof; and a guide mechanism along said actuating system including at least one guide member offset from said longitudinal axis and mounted to said stationary member proximally of said holding system with said guide member spaced proximally from said plate when said holding system is engaged to said plate along said longitudinal axis and with said at least one guide member positioned relative to said plate to guide placement of a bone engaging fastener through said at least one hole." Support for the amendments may be found, for example, in Figures 18-28 and paragraphs [0091]-[0094], [0105], and [0109]-[0112].

A review of Coates et al. fails to reveal any disclosure of a guide member that is mounted proximally of the holding system to a stationary member of an actuating system that is connected with the holding system. Rather, when guide member 180 is positioned relative to the plate to guide placement of the bone engaging fastener, it is positioned in the holding system at the distal end of the instrument through a foot 157 mounted to the distal ends of movable arms 151, 152, such as shown in Figure 19. Accordingly, withdrawal of the rejection of claim 36 along with claims 37-38 depending therefrom is respectfully requested.

Claims 23-27 stand rejected under 35 USC §103(a) as being unpatentable over Haider alone. Claims 23-26 depend from claim 20 and are allowable at least for the reasons claim 20 is allowable and also for the reasons provided in the previous responses. Withdrawal of this basis of the rejection of claims 23-27 is respectfully requested.

Claims 1-15, 18-27, 81-88, 92 and 93 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,413,259 to Lyons et al. alone and claims 1-15, 18-27 and 92-93 stand rejected over U.S. Patent No. 5,954,722 to Bono et al. alone. Independent claims 1, 20, and 81 have been amended as discussed above. Lyons et al. disclose a plate with a circular opening between the connection portions of the plate and linear outer sides extending between the connection portions. Therefore, the members on opposite sides of the circular hole do not include a uniform width along the central hole. Rather, the members have a variable width due the different curvatures of the inner and outer sides of the members along the central hole. Furthermore, there is no disclosure or teaching that the minimum width of the central hole is greater than the combined maximum widths of the members along the central hole. Therefore, withdrawal of this basis of the

rejection of claim 1 is respectfully requested along with claims 4, 11-14, and 18-19 depending from claim 1.

Lyons et al. also fail to disclose or suggest the features in claim 20. For example, there is no disclosure or teaching that the minimum width of the central hole is greater than the combined maximum widths of the members that extend along the central element. Therefore, withdrawal of this basis of the rejection of claim 20 is respectfully requested along with claims 21-27 and 92-93 depending from claim 20.

Lyons et al. also fail to disclose or suggest the features in claim 81. For example, the members along the central hole in Lyons et al. do not include a uniform width along the central hole. The members have a variable width due the different curvatures of the inner and outer sides of the members along the central hole. It also does not disclose or teach that the minimum width of the central hole is greater than the combined maximum widths of the members along the central hole and therefore does not teach claim 87. Therefore, withdrawal of this basis of the rejection of claim 81 is respectfully requested along with claims 82 and 87 depending therefrom.

With respect to Bono et al., it discloses a plate with an oval opening between the connection portions of the plate and concavely curved outer wall surfaces along the members that are located on each side of the oval opening that extend between the connection portions. Therefore, the members along the oval hole do not include a uniform width along the oval hole. Rather, the members have a variable width due the different curvatures of the inner and outer sides of the member along the oval hole. Furthermore, there is no disclosure or teaching that the minimum width of the oval hole is greater than the combined maximum width of the members along the oval hole. Therefore, withdrawal of this basis of the rejection of claim 1 is respectfully requested along with claims 4, 11-14, and 18-19 depending from claim 1.

Bono et al. also fail to disclose or suggest the features in claim 20. For example, there is no disclosure or teaching that the minimum width of the oval hole is greater than the combined maximum width of the members that extend along the oval element. Therefore, withdrawal of this basis of the rejection of claim 20 is respectfully requested along with claims 21-27 and 92-93 depending from claim 20.

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Claims 16-17, 28-35 and 89-91 stand rejected as being unpatentable over Lyons et al. in view of U.S. Patent No. 6,193,721 to Michelson. Claims 16 and 17 depend from claim 1 and are allowable at least for the reasons claim 1 is allowable over Lyons et al. as discussed above.

Claim 28 has been amended and recites "a plate including a length extending along a longitudinal axis between a first connection portion for attachment to a first vertebra and a second connection portion for attachment to a second vertebra, said plate further including a visualization opening extending therethrough for visualizing a space between the first and second vertebrae, said plate further including a first outer end wall extending transversely to said longitudinal axis along said first connection portion and a second end wall extending transversely to said longitudinal axis in said visualization opening and adjacent to said first connection portion; and a holding instrument including a remotely actuatable holding system engaged to said plate with a clamping force between said first and second end walls, wherein said holding system includes a first holding member and a second holding member engaged to respective ones of said first and second end walls to clamp said plate therebetween, wherein said first and second holding members move toward and away from one another in a direction that follows said longitudinal axis of said plate and further comprising a pair of guide members on said holding instrument positioned on opposite sides of said longitudinal axis when said holding system is engaged to said plate." Support for the amendments to claim 28 along with claims 32 and 34 can be found in the original claims and in Figures 18-28 and corresponding discussion of the same in the specification. Claim 33 is amended to maintain consistency with claim 28. The cited references fail to disclose or suggest the combination of these features recited in amended claim 28. Therefore, withdrawal of the rejection of claim 28 is respectfully requested.

Claims 29-35 depend from claim 28 and are also allowable at least for the reasons claim 28 is. Furthermore, at least claims 32 and 34 recite features that also not disclosed or suggested in the cited references. For example, amended claim 32 recites "wherein said connecting system includes a stationary member and a linkage movable relative to said stationary member with said handle system to move said first holding member relative to said second holding member to engage said plate therebetween, said pair of guide members being mounted to said stationary member proximally of said holding system." None of the references discloses or teaches these features. Amended claim 34 recites "wherein said second holding member is fixed and said first holding member is pivotally

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attached to said second holding member and movable relative to said second holding member and said pair of guide members between a clamping position and a release position while said second holding member and said pair of guide members are stationary." None of the cited references teaches or discloses these features. Withdrawal of the rejection of claims 29-35 depending from claim 28 is also requested.

Claim 89 has been amended and recites, among other features, "an actuating system including a movable linkage member and a stationary member, wherein said linkage member moves relative to said stationary member upon actuation of said actuating system; a holding system operably coupled to said actuating system, said holding system including first and second holding members movable with said actuating system between a release position and a clamping position to selectively engage and release said plate therebetween along said longitudinal axis thereof; and a guide mechanism along said actuating system including at least one guide member mounted to said stationary member proximally of said holding system and in offset relation to said longitudinal axis so that said at least one guide member is positioned relative to said plate to guide placement of a bone engaging fastener through said at least one hole when said first and second holding members are engaged to said plate along said longitudinal axis." Support for the amendments to claim 89 can be found, for example, in Figures 18-28 and paragraphs [0091]-[0094], [0105], and [0109]-[0112].

The cited references fail to disclose or suggest the at least one guide member mounted to a stationary member of an actuating system with the guide member positioned relative to the plate in combination with the other features of the holding instrument and plate as recited. Therefore, withdrawal of the rejection of claim 89 is respectfully requested along with claims 90 and 91 depending therefrom.

Claims 59-62 also stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bono et al. in view of Boucher et al. and, separately, over Lyons et al. in view of Boucher et al. Amended claim 59 recites, among other features, "said intermediate portion further comprising a visualization opening extending therethrough for visualizing the space when said plate is attached to the adjacent vertebrae, a first member along one side of said visualization opening and a second member along an opposite side of said visualization opening, said first and second members each including an outer side surface defining an outer most side of said plate and an inner side surface opposite said outer

side surface, said inner side surfaces defining respective opposite sides of said visualization opening that extend along said longitudinal axis, wherein said first and second members each include a maximum width transversely to said longitudinal axis between said inner side and said outer side surface thereof, said visualization opening including a minimum width transversely to said longitudinal axis between said opposite sides thereof, said minimum width of said visualization opening being greater than said maximum widths of said first and second members combined." Support for the amendment may be found, for example, in Figure 3 and paragraphs [0057], [0058] and [0081]-[0083] of the publication of the present application. Claim 60 has been amended to recite the members along the visualization opening have a uniform width along the visualization opening, and claim 61 has been amended to depend from claim 59.

As discussed above, Bono et al. and Lyons et al. fail to disclose or suggest that the minimum width of the central hole or oval hole is greater than the combined maximum width of the members that extend along the central hole or oval hole. Boucher et al. fail to remedy these deficiencies. The references also fail to teach or suggest the uniform width of the members along the visualization opening as recited in claim 60. Therefore, withdrawal of this basis of the rejection of claim 59 is respectfully requested along with claims 60-62 depending from claim 59.

In view of the foregoing, the present application including claims 1, 4, 11-38, 59-62, 81-82, 87 and 89-93 is believed in condition for allowance. The examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

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